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SEP 23 2008

In re Application of :
He et al. :
Application Number: 10/579597 : ON PETITION
Filing Date: 05/17/2006 :
Attorney Docket Number: OCT 001 :

This is a decision on the petition filed on August 4, 2008, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on February 21, 2008, for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on November 20, 2007, which set a three (3) month statutory period for reply. On February 21, 2008, the issue and publication fees were filed. On March 18, 2008, a Notice of Abandonment was

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

mailed, stating that the fees had been received after the expiration of the statutory period for their payment. A letter was filed on April 2, 2008, and a decision in response to the letter was mailed on June 9, 2008. The petition to withdraw the holding of abandonment filed on June 19, 2008, was dismissed on July 17, 2008.

It is noted that the petition form is not properly signed in that only one inventor has signed. However, the petition form is accompanied by a "STATEMENT ESTABLISHING UNINTENTIONAL DELAY," signed by all of the inventors. As the subject statement requests revival of the application under 37 CFR 1.137(b), states that the issue and publication fees have been paid, and includes the statement required by 37 CFR 1.137(b)(3), the accompanying statement will be construed as a properly signed petition to revive the application.

Receipt of the issue and publication fees submitted on February 21, 2008, is acknowledged.

This application is being referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D. I. Wood", is positioned above the printed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions